IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO. 244 OF 1991

1. Nathu Gundaji Lagad,
since decreased by his heir
plaintiff -Appellant No.2

2. Parubai Kisan More,
Since deceased through her
heirs and legal representatives:

(a) Kisan Yeshu More, 65,
Agriculturist and Pensioner,
residing at Kopre,Tal:Haveli,
Dist.Pune.

(b) Dattatraya Kisan More,
age 40, Occ: Service,
residence as abve.

(c) Ashok Kisan More,
age 40, Occ:Service
residence as above.

(d) Murlidhar Kisan More,
age 33, Occ:Agriculturist
residence as above.

(e) Chandrakant Kisan More,
age 28, Occ: service
residence as above.

(f) Sanjay Kisan More,
age 23, Occ: Student,
residence as above.

(g) Sharda Kisan More
her new name after marriage
Sharda Pirbhau Kenjle, age 19
Occ: Household work,
residing at Sangamwadi
Tal: Haveli, Dist: Pune.

(h) Alaka Gopal Wagh
age 30, Occ: Household work,
residing at Bhavdhan, Tal:

Mulshi, Dist : Pune.

(i) Kusum Dnyandeshwar Kudle
age 26 years, Occ: Household
work, residing at Varje
Jakat Naka, Tal: Haveli,
Dist: Pune. ..Appellants
(Org.Plffs.)

Vs.

1. Sambhaji Shivram Lagad
age 45, Occ: Agriculturist,
residing at Nanded, Tal:
Haveli, Dist: Pune.

2. Smt. Sumitrabai Sambhaji Lagad
age 38, Occ: Household work,
residing at same as above. ..Respondents
(Org. Defts.)

WITH

SECOND APPEAL NO. 245 OF 1991

1. Parubai Kisan More,
age 49, Occ: Agriculturist,
residing at Kopre, Tal. Haveli,
Dist. Pune.
(Since deceased during the
pendency of appeal in the
Dist. Court, Pune)
Through her heir and
legal representatives:

(a) Kisan Yeshu More, 65,
Agriculturist and Pensioner,
residing at Kopre,Tal:Haveli,
Dist.Pune.

(b) Dattatraya Kisan More,
age 40, Occ: Service,
residence as abve.

(c) Ashok Kisan More,
age 40, Occ:Service
residence as above.

(d) Murlidhar Kisan More,
age 33, Occ:Agriculturist
residence as above.

(e) Chandrakant Kisan More,
age 28, Occ: service
residence as above.

(f) Sanjay Kisan More,
age 23, Occ: Student,
residence as above.

(g) Sharda Kisan More
her new name after marriage
Sharda Pirbhau Kenjle, age 19
Occ: Household work,
residing at Sangamwadi
Tal: Haveli, Dist: Pune.

(h) Alaka Gopal Wagh
age 30, Occ: Household work,
residing at Bhavdhan, Tal:
Mulshi, Dist : Pune.

(i) Kusum Dnyandeshwar Kudle
age 26 years, Occ: Household
work, residing at Varje
Jakat Naka, Tal: Haveli,
Dist: Pune.

2. Kisan Yesu More,
age 56, Occ: Agriculturist,
residing at Kopre,
Tal: Haveli, Dist. Pune. ..Appellants
(Org.Defts.)

Vs.

Smt. Sumitrabai Sambhaji Lagad
age 38, Occ: Household work,
residing at same as above. ..Respondent
(Org. Plff.)

Mr. R.S. Apte h/f Mr. B.P. Apte for the appellants.
Mr. V.S. Gokhale for respondents.

CORAM: B.H.MARLAPALLE,J.

December 19, 2005.

ORAL JUDGMENT

1. By a common judgment and order dated 29th April 1978 the learned 4th Joint Civil Judge, Junior Division at Pune decided Civil Suit No.613 of 1972 and Civil Suit No.707 of 1972 and the latter Suit was dismissed whereas the earlier Suit was decreed by restraining the defendants therein (the present appellants) permanently from creating obstruction to the possession of the plaintiffs in the suit properties i.e. agricultural land in Survey Nos.79/1 and 79/2 and the house with Grampanchayat No.195 located at village Nanded, Taluka Haveli, Dist. Pune. Two separate appeals viz. Civil Appeal No.280 of 1978 and Civil Appeal No.334 of 1978 came to be filed by the appellants before the District Court at Pune. By separate judgments rendered on 23/10/1990 the learned Additional District Judge at Pune was pleased to dismiss both the appeals and hence these two Second Appeals have been filed separately by the appellants. As the suits were tried together and the evidence recorded in Regular Civil Suit No.613 of 1972 was treated to be the evidence in both the

suits, these appeals raise the same substantial questions of law, produced hereinbelow, and noted by this Court while admitting the appeals on 23/4/1991:

(a) Whether the Sale Deed dated 28/11/1968 is invalid because it was obtained by practicing fraud upon Nathu and without consideration?

(b) Whether the Sale Deed dated 8/7/1970 is invalid because it was executed by practising fraud upon the original owner Nathu particularly in the circumstance that it is executed by respondent no.1 as a holder of power of attorney from Nathu and in favour of respondent no.2 i.e. his wife.

(c) Whether the power of attorney in favour of respondent no.1 was obtained by practising fraud and whether the document executed by respondent no.1 in favour of respondent no.2 viz. the sale deed dated 8/7/1970 was void ab-initio.

(d) Whether the relationship of Sambhaji and Nathu, Sambhaji being a distant nephew and the relationship of Parubai and Nathu, Parubai being the only daughter would make the Will in favour of

Sambhaji at Exhibit 96 an extremely suspicious piece of document?

2. Regular Civil Suit No.613 of 1972 came to be filed by the present respondents on or about 25/4/1972 praying for permanent injunction against the present appellants and in respect of the suit property viz. village Panchayat House No.195 located in village Nanded, Taluka Haveli and the agricultural land in Survey No.79/1 admeasuring 52 Rs. as well as agricultural land located in Survey No.79/2 admeasuring 40 Ares of village Nanded, Taluka Haveli, Dist. Pune. These suit properties were owned by Nathu Lagad who had sold the same in favour of the respondent by Sale Deed dated 28/11/1968 (Exhibit 87) and Sale Deed dated 8/7/1970 (Exhibit 88) respectively. The appellant i.e. Smt.Parubai, wife of Kisan More was the daughter of Nathu Gundaji Lagad and she was married sometimes in 1950 in village Kopre which is the neighbouring village to village Nanded where Nathu was staying. It appears on or about 14th January 1972 the appellants published a notice in a Marathi daily by name "Vishal Sahyadri" published from Pune purportedly in the name of Nathu declaring that the suit properties were put in the

management of Parubai by Nathu as per his registered Will dated 16/4/1963 and no one was entitled to disturb the possession of Parubai over the suit properties. On or about 16/4/1972 Nathu was forcibly taken out of his house which was occupied by the respondents, by his daughter Parubai and her husband and, therefore, the respondents by publishing a notice dated 20/4/1972 replied the notice released by the appellants and pointed out that the suit property was sold by Nathu to Sumitrabai, the present respondent no.1. The appellants, therefore, filed Regular Civil Suit No.707 of 1972 on or about 27/4/1972 and prayed for a declaration that Nathu was the owner of the suit property, the sale deed dated 28/11/1968 and sale deed dated 8/7/1970 were illegal and void ab-initio and were obtained by practising fraud on Nathu and for consequential relief of permanent injunction.

3. There is no dispute that at the time the suits were filed the suit properties were in possession of the present respondents and during the pendency of the suits Nathu died on 26/8/1972. The Regular Civil Suit No.707 of 1972 was accordingly amended whereas in Regular Civil Suit No.613 of 1972 Nathu was not

impleaded as a necessary party. Parubai along with her husband Shri Kisan More were the sole defendants in Regular Civil Suit No.613 of 1972. As noted earlier the evidence recorded in RCS No.613 of 1972 was adopted and read in both the suits. The plaintiffs examined in all eleven witnesses i.e. Sumitrabai (PW 1), Sambhaji (PW 2), Dr.A.H.Nigudkar (PW 3), Shri Baban Lagad (PW 4), Shri Pundlik More (PW 5), Shri Suresh Gondkar (PW 6), Shri Sukhdeo Choudhari (PW 7), Shri Sopan Pokale (PW 8), Shri Vijaykumar Jagtap (PW 9), Shri Shankar Laxman Langad (PW 9A) and Laxman Sakharam Chavan (PW 10. On behalf of the defence i.e. the present appellants five witnesses came to be examined viz. Mrs.Parubai (DW 1), Kisan More (DW 2), Raghu Ranwade (DW 3), Kondiba Savla More (DW 4) and Krishna Maruti More (DW 5). Both the sale deeds i.e. Exhibits 87 and 88 are registered documents. The Will at Exhibit 86 and made in favour of Parubai on 16/4/1963 is also a registered document. However, the Will at Exhibit 96 dated 25/4/1968 is not a registered document. In support of this Will dated 25/4/1968 three witnesses have been examined. Dr.A.H.Nigudkar (PW 3) is the medical practitioner who had endorsed on the Will that Nathu Lagad was examined by him on 25/4/1968 and

he was found to be in fit conditions, mentally and physically. The Will was signed in his presence by Nathu who had expressed his full satisfaction and confidence on 25/4/1968. The other two witnesses viz. Laxman Chavan (PW 10) and Baban Langad (PW 4) were the attesting witnesses to the Will at Exhibit 96 and both of them stated in the witness box that Nathu had signed the Will on his own and while he was in sound mental conditions on 25/4/1968 in favour of his nephew Sambhaji. Though the said document at Exhibit 96 was not registered, the execution of the same has been duly proved by the plaintiffs before the trial Court and both the Courts below have accepted the same to be a genuine document. It is further required to be noted that on execution of the Will dated 25/4/1968, Nathu addressed a letter dated 4/12/1968 to his daughter Parubai @ Jai and sent the same by registered A.D. The said communication was received by Dattu, the son of Parubai on 9/12/1968 as per the postal acknowledgement receipt (Exhibit 97-A). The letter dated 4/12/1968 has been marked as Exhibit 97 and it was written in Marathi informing Parubai that earlier Will signed in her favour was revoked by Nathu. Subsequently on 21/10/1969 Nathu executed a general power of attorney in favour of

Sambhaji Lagad and in the same he referred that Sambhaji was his nephew and Sambhaji was cultivating the suit land. Exhibit 98 is the said general power of attorney. There is yet another document on record at Exhibit 99 and that is the letter of confirmation dated 25/6/1970 signed by Nathu declaring that Sambhaji was authorised to sell the suit agricultural land.

4. The Sale Deed dated 28-11-1968 (Exhibit 87) has been signed by Nathu himself (thumb impression) and it is a registered document in respect of the suit house. It has come in the evidence that after this Sale Deed was executed, the respondent no.1 and his family members stayed with Nathu in the suit house and this evidence of the independent witnesses could not be impeached by the appellants. The house property was mutated in the name of the respondents-plaintiffs much before the suits were filed before the trial Court, as is evident from the documentary evidence placed on record. Thus the appellants failed to prove that the sale deed was executed by playing fraud on Nathu or by any deceitful means. Even the challenge to the said document appears to be belated and by way of

afterthought. On 16/4/1972 Nathu was forcibly taken away in a bullock car by Kisan More, the husband of Parubai and from the custody of the plaintiffs while they were staying in the suit house. From November 1968 till January 1972, the appellants did not raise any objection against the plaintiffs residing in the suit house along with Nathu, who had no other children. Parubai being the married daughter of Nathu, it was reasonable for him to seek the assistance of his nephew Sambhaji for cultivation of the suit land as well as for any other assistance required at village Nanded while his daughter was staying at village Kopre in her matrimonial home. At the same time by signing the Will in favour of Parubai in the year 1963, the property was not transferred in her name and the Will would take effect only on the demise of Nathu. He was entitled to deal with the property on his own volitions and without seeking any consent / approval of his daughter. Thus the Courts below have rightly rejected the challenge to the said document at Exhibit 87.

5. Now coming to the next sale deed at Exhibit 88, one attesting witness by name Shankar Langad has

been examined as PW 9A and receipt signed on 9/7/1970 and marked as Exhibit 113 has also been proved through the testimony of Sukhdeo Dhanaji Choudhari (PW 7). At the relevant time he was holding the additional charge of post master and was at village Nanded from 1968 to 1976. He stated that on 9/7/1970 deceased Nathu had approached him along with Sambhaji at about 6 p.m. and purchased a revenue stamp from him. The said revenue stamp was affixed on the receipt at Exhibit 113 and signed by Nathu in the presence of Sukhdeo, PW 7, in the verandah of the school building. The other witness to the said receipt was Baban Mahadeo Langad who also came to be examined as PW 4. Dr.A.H. Nigudkar, PW 3 was in the witness box in support of the said Will in favour of Sambhaji and he categorically stated that before signing the Will (Exhibit 96) in his presence, Nathu was examined by him and was found to be in sound health and though it has been admitted that Nathu was present in the Sub-Registrar's office when the Sale Deed at Exhibit 88 was registered, the signing of the sale deed by the General Power of Attorney on behalf of Nathu would not make the said document illegal or fraud. In fact the presence of Nathu in the Sub-Registrar's office would add strength to the said

document. The witnesses examined by the appellants in support of their case were hardly any residents from village Nanded and, therefore, would not have any personal knowledge regarding the desire of Nathu. The plaintiffs clearly stated before the trial Court that Nathu was looked after by them while his daughter was away and more particularly after Nathu had executed the first Will in favour of his daughter in 1963. They also stated that Nathu's wife used to be sick and the medical expenditure was borne by Sambhaji. This evidence could not be shaken on any count and, therefore, it will have to be accepted that out of the consideration of Rs.4000/- by way of sale price of the suit agricultural land, Nathu had already received Rs.3100/- to attend to his household expenditure as well as the medical treatment and funeral expenses of his wife and the balance amount of Rs.900/- was paid to him just before the sale deed was signed. The oral and documentary evidence adduced by the respective parties has been meticulously examined by the lower Appellate Court and it was pleased to confirm the findings of fact recorded by the trial Court. The onus of proving two Sale Deeds as illegal or fraud was solely on the present appellants and obviously they failed to

discharge this burden. The registered Sale Deed at Exhibit 88 was also sought to be challenged after about two years and its execution and the plaintiffs deposed before the trial Court that all these actions were taken by the appellants by way of afterthoughts and more particularly after Nathu was taken away forcibly on 16/4/1972 from the custody of Sumitrabai while her husband Sambhaji was away from home. In the obtaining circumstances, the Courts below rightly held that the appellants failed to discharge their burden to prove that the Sale Deed at Exhibit 88 was executed either by way of fraud, mischief, misrepresentation or undue influence on Nathu or by any other illegal means. The view taken by both the Courts below does not suffer from any infirmities while assisting the facts placed on record and, therefore, the challenge to these concurrent findings on the nature of the Sale Deeds under challenge must fail.

6. In the premiss the Second Appeals stand dismissed but without any order as to costs.

(B.H.MARLAPALLE,J.)